

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

STEPHEN GILL and MICHELLE GILL,  
husband and wife,

Plaintiffs,

vs.

CASE NO.: 05-cv-10309-MLW

UNITED STATES OF AMERICA,

Defendant.

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**PLAINTIFFS' REPLY TO DEFENDANT'S COUNTERCLAIM**

Plaintiffs STEPHEN GILL and MICHELLE GILL, husband and wife (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby Reply to the Counterclaim of Defendant UNITED STATES OF AMERICA ("Defendant") set forth in the *Answer of the United States* [Dkt.#30] ("Defendant's Answer") as follows:

**REPLY**

To the extent that the "wherefore clause" following the penultimate unnumbered paragraph of Defendant's Answer avers affirmative claims by Defendant against Plaintiffs, Plaintiffs deny the same.

**FIRST DEFENSE**

Defendant's Counterclaim must be dismissed for failure to state a claim upon which relief can be granted.

**SECOND DEFENSE**

Defendant's Counterclaim must be dismissed as this Court lacks jurisdiction over the subject matter of Defendant's Counterclaim because the same was not timely brought within the applicable limitation(s) period(s) of 28 U.S.C. § 2415.

**THIRD DEFENSE**

Defendant's Counterclaim must be dismissed as this Court lacks jurisdiction over the subject matter of Defendant's Counterclaim because the same was not timely brought within the applicable limitation(s) period(s) of 31 U.S.C. § 3711.

**FOURTH DEFENSE**

Defendant's Counterclaim must be dismissed as this Court lacks jurisdiction over the subject matter of Defendant's Counterclaim because the same was not timely brought within the applicable limitation(s) period(s) of 28 U.S.C. § 3716.

**FIFTH DEFENSE**

Defendant's Counterclaim must be dismissed as this Court lacks jurisdiction over the subject matter of Defendant's Counterclaim because the same was not timely brought within the limitation(s) period(s) of all applicable law(s).

**SIXTH DEFENSE**

Defendant's Counterclaim must be dismissed as this Court lacks jurisdiction over the subject matter of Defendant's Counterclaim because the Defendant has failed to exhaust its administrative remedies in the manner provided by 28 U.S.C. § 3711.

**SEVENTH DEFENSE**

Defendant's Counterclaim must be dismissed as this Court lacks jurisdiction over the subject matter of Defendant's Counterclaim because the Defendant has failed to exhaust its administrative remedies in the manner provided by 28 U.S.C. § 3716.

**EIGHTH DEFENSE**

Defendant's Counterclaim must be dismissed as this Court lacks jurisdiction over the subject matter of Defendant's Counterclaim because the Defendant has failed to exhaust its administrative remedies in the manner provided by applicable law(s).

**NINTH DEFENSE**

Defendant's Counterclaim must be dismissed due to estoppel.

**TENTH DEFENSE**

Defendant's Counterclaim must be dismissed due to illegality.

**ELEVENTH DEFENSE**

Defendant's Counterclaim must be dismissed due to laches.

**TWELFTH DEFENSE**

Defendant's Counterclaim must be dismissed due to waiver.

**WHEREFORE**, Plaintiffs, having replied to Defendant's Counterclaim, respectfully request that this Honorable Court dismiss Defendant's Counterclaim *with prejudice*, and enter judgment for Plaintiff, including an award of all fees, costs and expenses incurred in defending against Defendant's Counterclaim, and any and all other relief that this Honorable Court deems just and proper.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this, the 9<sup>th</sup> of April, I electronically filed the within document with the Clerk of Court by using its CM/ECF system which, in turn, will electronically transmit notice of the same to the following: AUSA Rachel Rollins, United States Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA 02210.

**/s/ STEPHEN D. GILL**

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*Pro se* Plaintiff and Attorney

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